

**FOOD
INDUSTRY
ALLIANCE OF
NEW YORK
STATE, INC.**



FoodScan

UPDATE ON ISSUES AND EVENTS FOR NEW YORK STATE FOOD EXECUTIVES

JAN/FEB 1998

ISSUE HIGHLIGHTS:

- Milk Pricing
- Indian Tobacco & Gas Sales

**DAIRY TASK FORCE
RELEASES REPORT
... Gov Supports
Compact Concept**

The New York State Dairy Task Force appointed by Governor George Pataki has issued its final recommendations. The Task Force, comprised of government officials, representatives from the retail and dairy industries, including FIA's Michael Rosen, and consumer advocates took a broad look at how best to insure the viability of New York's dairy industry. While a wide range of recommendations was discussed in the Task Force's report, the Governor chose to support the concept of a dairy compact. He announced he would sign legislation currently pending in the state legislature authorizing New York State to join the Northeast Dairy Compact. Another possibility is forming a three state compact with New Jersey and Pennsylvania. Alternatively, New Jersey and Pennsylvania could join the Northeast Compact if New York, as the connecting state, became a member. The federal government is allowing states to form dairy coalitions that can set wholesale milk prices higher than the federal pricing system permits. A related issue is the USDA's refinement of the current milk pricing system as directed by the 1996 farm law. All compacts would terminate once new federal orders are in place. FIA contacted Cornell University and the Department of Agriculture & Markets and was told that if New York joined the Compact now, already high milk prices would not change significantly in New York City and not-at-all upstate; however, as market forces change in the future, there could be significant effects on milk prices.

Allowing farmers to join the compact is a charged issue. Farmers argue that the current federal milk pricing system is inadequate and does not provide them with enough income to meet costs. They need to join a compact in order to set higher wholesale prices. Consumer advocates and advocates for the poor insist this will hurt consumers. They contend that a dairy compact is a form of price fixing and that milk buyers would see increases of 15 to 20 cents. Critics also argue that large dairy farms and small family farms will receive roughly the same amount of price relief. In addition, it is a polarizing issue for the legislature and the Governor in light of the inherent upstate/downstate dynamics.

Among its other recommendations, at FIA's Michael Rosen's urging, the Task Force called upon the Governor to re-examine the milk price gouging law. FIA contends that the law is unfair to smaller stores with higher wholesale milk prices. Under the law smaller stores may be unfairly accused of price gouging when the price charged is consistent with their higher costs. In addition, the law leads to retail price instability and does not allow sufficient flexibility to feature milk on sale. Finally, opponents insist the law actually increases prices to consumers. The Task Force recommended that the Governor investigate the merchandising of milk while protecting consumers, including any needed reform. Assemblyman William Parment (D-Jamestown), chair of the Agriculture Committee and author of the milk price gouging law, has been opposed to revising the law in the past. (On a related matter, shortly after Governor Pataki came out in support of New York joining the Compact, Assembly Democrats

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released a study alleging violations of the price gouging law in the metro region and charging that the Pataki administration had failed to enforce the law.)

Additional Task Force recommendations focused on economic development, such as exports, new product development and new technology; reduction of electric costs and property taxes; and the use of futures markets and contracts and other market mechanisms.

Nationally, USDA Secretary Dan Glickman introduced a proposal to streamline the 60 year old system of pricing milk. The proposal would consolidate the existing 31 federal milk marketing orders which determine the prices paid by processors to farmers to just 11 in an attempt to create a more market-oriented system. Northeast farmers are likely to oppose the measure since it could lead to lower wholesale prices for the region. (Minimum guaranteed prices are now higher in the Northeast than they are in the Midwest.) Secretary Glickman acknowledged the reforms could bring prices down in an area such as the Northeast, where minimum guaranteed prices are now higher than they are in the Midwest. Glickman is proposing either a two-year transition period in which prices paid to farmers would remain artificially high or a three to five year phase-in period for the new system. USDA is taking public comment on the proposed rule through March 31. After that, a series of hearings will be held around the country before a final rule is proposed in the fall. Then farmers in each marketing region must vote on the order.

**TAXING ISSUE
... FIA Pushes
On Indian Taxes**

The Alliance sent a strongly worded letter to the Department of Taxation and Finance urging the Department to preserve the integrity of its own tax policy by withdrawing a proposed rule change repealing regulations requiring Indian tribes to pay taxes on retail reservation sales of tobacco and petroleum products to non-Indians. FIA stated that the proposal will lead to widespread tax evasion by non-Indians buying untaxed tobacco products for off-reservation use. Large illegal businesses have emerged whereby vans and truck loads full of cigarettes are sold to non-Indians for off-reservation retail sales. These "businesses" are run by individuals seeking to avoid paying excise, sales and income taxes, placing legitimate retailers at a severe competitive disadvantage and depriving the state and local governments of tax revenue. The state is denying equal protection to the very businesses it heavily regulates and is encouraging, by this proposed rule making, widespread tax evasion by non-Indians. In addition, since these vendors of untaxed products are already violating the law, they place little regard for complying with the public health law provisions regarding underage sales of tobacco products to minors. This proposal will clearly lead to more underage sales of cigarettes to minors. FIA is also working with the Coalition for a Healthy New York to stop the measure.

The Pataki administration has done a complete turn-around on this issue. Last spring the state attempted to collect taxes (with a court-approved tax collection plan) on gasoline and cigarette sales on Indian reservations to non-Indian customers. The state reached a deal with six Indian nations allowing the Indians to impose their own taxes on cigarettes and gasoline sold on their reservations. However, the state failed to reach compromises with other Indian nations that had the most at stake in the gasoline and cigarette businesses. The administration imposed a blockade on gasoline and cigarette shipments to the Indian tribes that refused to enter into a compact with the state. As a result, bitter and at times violent demonstrations erupted and the Governor retreated. When Albany halted attempts to collect the tax money, a non-Indian retailer sued, claiming that the administration was placing them at a permanent disadvantage. Lower courts agreed. The case is now before the Court of Appeals. Surprisingly, the Pataki administration did not wait for the final verdict from the Court of Appeals to announce its intentions to do away with the regulation. A decision is expected within weeks.

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BOTTLE LAW
... FIA Seeks Regulatory Relief

On the heels of last year's historic handling fee increase and repeal of the soft drink container tax, FIA plans to pursue an amendment to Bottle Law regulations to reduce the number of deposit containers grocers are required to accept per person/per day from the current count of 240 to 72. The proposal grew out of discussions by FIA's Government Relations Committee on the prospects and strategy for the eventual repeal of the Bottle Law. Committee members reasoned that, particularly in the crowded New York City market area, permitting stores to take back fewer containers would relieve some of the burdens caused by the extremely large number of persons redeeming the maximum number of containers.

BILL WATCH:
... Price Gouging Law

- FIA is opposing a bill introduced by Assemblywoman Audrey Pheffer (D-Queens), chair of the Consumer Affairs and Protection Committee, which would change the state's price gouging law. A.8920 allows a private right of action awarding attorney's fees and a minimum of \$1,000 in damages to plaintiffs. The court may also award a \$5,000 penalty and attorney's fees to a prevailing plaintiff. Currently, price gouging suits can only originate at the Attorney General's office. This bill allows consumers to bring price gouging suits against a company. FIA contends that without some safeguards built into the law, retailers will be subject to dubious lawsuits by trial lawyers seeking a quick award and will be forced, in many instances, to settle to avoid protracted court costs.

... Bad Check Fee

- Legislation increasing the maximum fee a retailer may impose for a bad check has been introduced by Assemblyman Robin Schimminger (D-Erie), chair of the Assembly Commerce Committee. Assemblyman Schimminger sought (and received) FIA's support for an increase. Currently, a retailer may impose a charge of \$20 for a bad check. FIA figures the average total cost to a retailer for a bounced check comes to \$28.69. The amount was last raised from \$10 to \$20 in 1991.

... Alcohol Sales

- FIA is working with Assembly staff to gain passage of A.6056-A introduced by Assemblyman Schimminger. The bill would offer an affirmative defense to a company when a cashier makes an illegal alcohol sale to a minor despite receiving server training. The Senate companion bill, S.3358-A by Senator Volker (R-Genesee), was passed last year by the Senate but must be adopted again this year.

... Medicaid Prescriptions

- The Senate passed S.6170, a bill allowing Medicaid prescriptions to be filled at any pharmacy. Currently they must be filled by HMO designated pharmacies. Passage of a companion bill in the Assembly is likely. The Governor vetoed this measure last year and this year's version was retooled to address his concerns.

TON MILEAGE TAX
... FIA Working To Reduce/Repeal

FIA has identified member interest in reducing or repealing the Ton Mileage Tax. The Ton Mileage Tax is imposed at a rate of 6.6 cents per mile (varying somewhat based on the size and weight of vehicles) for all non-Thruway miles. The tax was rescinded from Thruway miles in two steps on January 1, 1995 and the balance on January 1, 1996. New York is one of only five states that impose a similar tax. The others are Kentucky, New Mexico, Idaho and Oregon. **Senate Majority Leader Joseph Bruno (R-Saratoga)** has proposed reducing the tax by 25 percent in the budget negotiations. Neither the Governor nor Speaker Sheldon Silver (D-New York) has expressed an interest to date. The Motor Truck Association is working with FIA on this issue.

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EBT IN NYC
... Starting This
Summer

FIA has learned that an EBT pilot is tentatively set to begin July, 1998 on Staten Island. Roughly one month later, the Department of Social Services (DSS) pilot will be extended to three zip codes in Manhattan and by the end of 1998 all of Manhattan should be on board. The remaining New York City boroughs, Bronx, Queens and Brooklyn, are scheduled to receive EBT in the order listed by mid 1999. Once all of New York City has EBT, DSS will rollout EBT to the rest of the state, with a targeted completion date of December 1999. Expansion of the rollout is contingent upon successful implementation in each preceding region.

BEER SCHEMATICS
... Joint Proposal
Submitted To SLA

FIA and the New York Beer Wholesalers Association have jointly submitted a proposal to authorize the use of schematics under the "no gift or services" rule to the State Liquor Authority (SLA). The proposal is in response to an SLA ruling (on a complaint filed by one beer wholesaler on a second wholesaler) that a schematic or plan-a-gram supplied by a wholesaler or brewery violates ABC Law and regulations against the "gifts and services" provisions for retailers. The proposal would allow a wholesaler to provide a retailer with a schematic or plan-a-gram provided that: all wholesalers selling beer or wine products to a licensee must be given at least seven days notice of the retailer's intention to set or re-set coolers or shelves in its store; every wholesaler a store deals with must be given an opportunity to submit a schematic; only those wholesalers actually selling beer or wine products to a particular location are entitled to submit a schematic for that specific location and/or obtain copies of proprietary sales data; all wholesalers must be given the same proprietary sales data at the same time; and all wholesalers selling beer to the retailer must be given at least forty-eight hours notice by telephone or facsimile the date and time of the set or re-set of the cooler or shelves. Retailers may choose the schematic they want.

CAPITOL CHANGES
... Names Making News

Since the last issue of *FoodScan* there have been some changes in Albany's landscape. Bob King, former director of the Office of Regulatory Reform, was named Budget Director by Governor Pataki. FIA enjoys an excellent working relationship with King. Anthony Casale is leaving his post as State Liquor Authority (SLA) chairman to take a position with Lynn University in Boca Raton, Florida. Former firefighter James J. McGowan, has been approved as Labor Commissioner. On a sad note, Senator Norman J. Levy passed away on February 7. Levy, chairman of the Transportation Committee, was a good friend to FIA and its members.

**1998 PUBLIC AFFAIRS
ASSEMBLY**
... With FMI, FDI,
& NGA On 3/16-17

The Food Marketing Institute (FMI), Food Distributors International (FDI) and the National Grocers Association (NGA) have joined together to host the 1998 Joint Public Affairs Assembly March 16-17 at the Grand Hyatt in Washington D.C. The meeting will allow the nation's retailers, wholesalers, food service distributors and state associations to speak with one voice to members of Congress and the administration on legislative and regulatory issues for maximum effectiveness and impact. To register call FMI at (202) 452-8444. The registration fee is \$225 per person and \$95 for spouses.

**FOOD
INDUSTRY
ALLIANCE OF
NEW YORK
STATE, INC.**

printed on recycled paper



50 Broadway
New York, New York 10004
Telephone: (212) 558-6500

PATRICIA BRODHAGEN, *FoodScan Editor*

130 Washington Avenue
Albany, New York 12210
Telephone: (518) 434-1900

SUSAN SCHIANO, *Associate Editor*

518 517833